Where there is a contract for the sale of chattels and title has not yet passed to the vendee, on the vendee's refusal to accept, the measure of damages is usually the difference between the contract price and market value at the time and place of delivery. *Windmuller* v. *Pope* (1887) 107 N. Y. 674, 14 N. E. 436. Where the market value is as high as the contract price, recovery is limited to nominal damages; *Hill* v. *McKay* (1892) 94 Cal. 5, 29 Pac. 406; so also, in the absence of proof of market value. *Brown* v. *Trinidad Mfg. Co.* (1908) 210 Mo. 260, 169 S. W. 22. Where, however, the vendor can treat the goods as belonging to the vendee, he may receive the full contract price. *Ballentine* v. *Robinson* (1863) 46 Pa. St. 177. And if he resells in good faith on behalf of the vendee, he receives the difference between the contract and selling price, together with the expenses of resale. *Sawyer* v. *Dean* (1889) 114 N. Y. 469, 21 N. E. 1012. In a sale of stock in general, the recovery is limited to the difference between the agreed price and the market value of the stock at the time of delivery. See *Eustice* v. *Meytrott* (1911) 100 Ark. 510, 514, 140 S. W. 590; *Jamal* v. *Moola Dawood* [1916] 1 A. C. 175. But a distinction is drawn in a sale of specific shares of stock, where the vendor recovers the full agreed price. *Reynolds* v. *Callender* (1902) 19 Pa. Super. 610; *Pearson* v. *Mason* (1876) 120 Mass. 53; *Pittsburgh Hardware Co.* v. *Brown* (C. C. A. 1909) 174 Fed. 981. It is evident from the emphasis placed upon the fact that the stock was ascertained and specific, that the court in the instant case went on the theory that title had passed to the vendee, and consequently the vendor was entitled to the full price, in accord with the general rule.

DIVERSE CITIZENSHIP—CLASS SUITS—RES ADJUDICATA.—The plaintiff, a fraternal benefit association incorporated in Indiana, was sued by certain of its members, in behalf of all those similarly situated, to determine their rights under a scheme of reorganization. All those members being citizens of other states, the suit was brought in a federal court on the ground of diversity of citizenship. This suit having been decided in favor of the corporation, the defendants, other members of the class who were citizens of Indiana, sued in the state court on the ground that they were not bound by the federal adjudication. In a suit to enjoin this action as *res adjudicata, held,* injunction granted. *Supreme Tribe of Ben Hur* v. *Cauble* (1921) 41 Sup. Ct. 338.

The fact that members of a class for whose benefit an action is being prosecuted are citizens of the same state as the defendant, provided they are not parties to the record, does not affect the jurisdiction of a federal court. *International Trust Co.* v. *Townsend Brick Co.* (C. C. A. 1899) 95 Fed. 850. The real question is, how far are members not parties to the record bound by the adjudication. In general, in class suits, a decree is binding against the whole of the class. *Wallace* v. *Adams* (1907) 204 U. S. 415, 27 Sup. Ct. 863. But rule 39 of the Federal Equity Rules provides that where proper parties cannot be joined because they are outside the jurisdiction of the court, a decree shall be without prejudice to their rights. Were these parties outside the jurisdiction? It is clear their joinder in the first place would have ousted the court. *Coal Co.* v. *Blatchford* (1870) 78 U. S. 172. But their coming in later would not necessarily do so. *Stewart* v. *Dunham* (1885) 115 U. S. 61, 5 Sup. Ct. 1163. And this is the *ratio decidendi* of the court in the instant case, see p. 342. However, plaintiffs later joined are usually regarded as parties from the beginning. *Commonwealth for Wiggins* v. *Scott* (1901) 112 Ky. 252, 65 S. W. 596; see *Brinckerhoff* v. *Bostwick* (1885) 99 N. Y. 185, 194, 1 N. E. 663. But since it is the policy of the courts to take jurisdiction whenever possible this inconsistency is not objectionable. The difficulty is that this rule has been held to apply only where "incidental and ancillary relief" is asked for, and not where the case affects "directly the interests of the interveners." *Mangels* v. *Donau Brewing Co.*

(C. C. 1892) 53 Fed. 513. Since there can be no question that here the defendants' rights were directly affected, the instant case must be said to overrule *Mangels* v. *Donau Brewing Co., supra,* and to extend the decision in *Stewart* v. *Dunham, supra,* to all cases of intervention. This seems a rather unjust rule since such parties could not have instituted the suit originally. The other rule seems preferable, the objection of multiplicity of actions being met by the argument that the only difference would be the bringing of two suits instead of one, one by all the non-residents in a federal court, the other by the residents in the state court.

DOMICIL—HUSBAND AND WIFE—FICTION OF UNITY.—In 1873, the decedent, whose life was spent in Scotland, married a domiciled Scotchman. In 1893, because of his constant drunkenness, her mother paid his way to Australia. In 1902 he purported to marry there a woman with whom he lived until his death in 1918. The decedent died in 1915 pending divorce proceedings in Scotland. *Held,* her estate was subject to legacy duty according to the law of Australia. Her husband had become domiciled there. The domicil of the wife follows that of the husband under the doctrine of marital unity. *Lord Advocate* v. *Jaffrey and Another* (H. L. 1920) 124 L. T. R. 129.

With this latest expression of the House of Lords on the subject of a wife's domicil should be compared the judicial trend in this country. To obtain a divorce, a wife can acquire a separate domicil. *Cheever* v. *Wilson* (1869) 9 Wall. 108; *Perkins* v. *Perkins* (1916) 225 Mass. 82, 113 N. E. 841. And when blameless, she is not domiciled with her husband so as to permit of service by publication when he sues for divorce in another jurisdiction. *O'Dea* v. *O'Dea* (1885) 101 N. Y. 23; *Perkins* v. *Perkins, supra.* On these points the English law is not clear. See *Williamson* v. *Osenton* (1914) 232 U. S. 619, 625, 34 Sup. Ct. 442; Dicey, *Conflict of Laws* (2nd ed. 1908) 132. For suing others in a federal court, a wife, justifiably living apart, may gain a domicil of her own. *Williamson* v. *Osenton, supra.* Also, for certain other purposes. *Matter of Florance* (1889) 54 Hun 328, 7 N. Y. Supp. 578, *aff'd.* 119 N. Y. 661, 23 N. E. 1151 (probate of will); *Shute* v. *Sargent* (1892) 67 N. H. 305, 36 Atl. 282 (settlement of estate); *Matter of Crosby* (1914) 85 Misc. 679, 148 N. Y. Supp. 1045 (appraisal under Transfer Tax Law). But probably a wife unjustifiably living away from her husband may not benefit by a separate domicil. *Hammond* v. *Hammond* (1905) 103 App. Div. 437, 93 N. Y. Supp. 1; *Loker* v. *Gera'd* (1892) 157 Mass. 42, 31 N. E. 709. Nor even, it seems, may she then claim for her benefit his domicil. *Prater* v. *Prater* (1888) 87 Tenn. 78, 9 S. W. 361; *cf. In re Coreil's Estate* (1919) 145 La. 788, 83 So. 13. And when husband and wife live mostly apart, but without estrangement, there is but one domicil,—the husband's. *Howland* v. *Granger* (1900) 22 R. I. 1, 45 Atl. 740; *Anderson* v. *Watt* (1891) 138 U. S. 694, 11 Sup. Ct. 449. In the instant case, the court found the path to progress already paved with dicta. See *Dolphin* v. *Robins* (1859) 7 H. L. C. *389, *418; *Le Sueur* v. *Le Sueur* (1876) L. R. 1 P. D. 139, 141. These are definitively rejected, and the marital unity theory exalted. In the light of modern conditions, this conceptualistic fetichism seems singularly out of place. See *Shute* v. *Sargent, supra,* 305 *et seq.*

EASEMENTS—IMPLIED IN FAVOR OF GRANTEE—EFFECT OF SALE OF SERVIENT TENEMENT.—The plaintiff and his brother, M, had been devised their father's farm as tenants in common, subject to a life estate in their mother in the dwelling-house and lot. A spring on the farm supplied the house with water through an underground pipe. The brothers partitioned by an exchange of quit-claim deeds. Upon their mother's death the plaintiff bought M's moiety in the house and lot, taking a quit-claim deed. Subsequently M conveyed his separate portion to